(2005) 12 NCDRC CK 0049

In the National Consumer Disputes Redressal Commission

ORIENTAL BANK OF COMMERCE APPELLANT

Vs

MOTI LAL SHARMA RESPONDENT

Date of Decision : 15-12-2005

Acts Referred:

Citation : 2006 1 CLT 517 : 2006 1 CPC 370 : 2006 1 CPJ 88 : 2006 1 CPR 187

Hon'ble Judges : B.K.Taimni J.

Final Decision : Appeals disposed of

Judgement

1. THESE two appeals arise from a common order passed by the State Commission on 9.5.1997.

2. VERY briefly the facts of the case are that the complainant Mr. Moti Lal Sharma (since deceased) obtained a Jeevan Dhara Policy from Life Insurance Corporation of India (LIC) in his own name in the year 1989. Upon surrender of the policy on 14.8.1992, as per rules, along with the prescribed form and completing all the formalities, when the complainant/respondent was not getting the money, he made several visits to the office of LIC, he was not being attended to but finally in reply to letter of the appellants, LIC wrote to the complainant that the surrender value of the Policy amounting to Rs.1,36,548 has been sent to the complainant by their cheque No. 989887 dated 8.9.1992, drawn on the United Commercial Bank, New Delhi under registered cover on 25.9.1992. Since the complainant had never received this amount, again the matter was taken up with the appellant, LIC, but getting no reply, the complainant filed a complaint before the State Commission, who after hearing the parties and also joining Oriental Bank of Commerce as a party, allowed the complaint and directed both LIC and the Oriental Bank of Commerce to pay an amount of Rs.1,36,548 along with interest @ 18% p.a. from 1.10.1992 till the date of payment along with compensation of Rs. 5,000. Liability was to be joint and several. Aggrieved by this order, these two appeals have been filed before us.

Learned Counsel appearing for the respondent complainant stated that the respondent Mr. Moti Lal Sharma has since died on 10.5.2000, and he is survived by widow, Mrs. Gayatri Sharma, one son, Mr. Lalit Sharma and two daughters, namely Mrs. Rama Sharma and Mrs. Rekha Sharma, and they be taken on record as respondents. There is no objection from the learned Counsel for both the appellants, hence they are taken on record.

3. WE heard the learned Counsel for both the parties at length and perused the material on record. The case of the LIC is that as per their record, they have sent the cheque drawn on United Commercial Bank, New Delhi (their bankers) under registered cover on 25.5.1992, hence they have discharged their duty and no liability can be fastened on them. The case of Oriental Bank of Commerce is that they have received the cheque. Some one opened the account in Oriental Bank of Commerce, Wazirpur Branch on 19.9.1992 by depositing Rs. 300 and the cheque drawn in favour of Moti Lal Sharma was deposited in that account, which was collected on 3.10.1992 and the whole amount was withdrawn from that account on 7.10.1992, leaving a balance of Rs. 848. The case of the bank is that the cheque was collected bona fide and the amount was withdrawn by him was in normal course and the account was opened in the name of Moti Lal Sharma after he had been introduced by one Ashok Kumar Gupta. The opening of account and withdrawal of money was denied by Moti Lal Sharma. In the aforementioned circumstances, issue before us is to fix the liability of non-receipt/non-delivery of cheque to the complainant (since deceased). It is by now a settled proposition of law that unless there is an agreement between the parties or it is specifically requested by a consumer or a beneficiary that the cheque should be sent by Post Office. Only then Post Offices shall be deemed to the agent of the beneficiary, not otherwise. In the instant case nothing has been shown to indicate that the complainant has agreed or requested for such an arrangement. If in these circumstances, LIC decided to send the cheque through a registered post, the Post Office will be agent of the LIC. No evidence has been produced either before the State Commission or before us that this cheque was delivered to the respondent/complainant. If the cheque is not proved to be received by the respondent/complainant, LIC cannot be absolved of their liability. They were definitely deficient in rendering service to the respondent/complainant by not ensuring that the cheque is delivered to him. Non-delivery of cheque to him is a clear case of deficiency. Hence, we cannot hold the Bank liable for any deficiency qua the respondent complainant as they opened the account on reference and also operated the account in normal course.

4. IN our view the State Commission erred in fastening the liability on the Oriental Bank of Commerce for they cannot be held responsible for rendering deficient service to the respondent/complainant. IN view of this, the order passed by the State Commission is modified to the extent that LIC is directed to pay the whole decreed amount to the complainant along with interest @ 12% p.a. instead of 18% p.a. as ordered by the State Commission w.e.f. 1.10.1992 till the date of payment along with compensation of Rs. 5,000 awarded by the State Commission. First Appeal No. 237/1997 is allowed and order against them passed by the State Commission is set aside. First Appeal No. 241/1997 is

allowed to the extent rate of interest payable shall stand reduced to 12% p.a. instead of 18% p.a. as ordered by the State Commission. However, the LIC shall be free to proceed against the Postal Authority or any one else who withdrew that money, as per law. LIC shall also be entitled to the benefit of time spent before the Consumer Forums under Section 14 of the Limitation Act while calculating the period of limitation for filing the suit before a competent Court in terms of judgment passed by the Hon''ble Supreme Court in the case of Laxmi Engineering Works v. P.S.G. Industrial Institute, II (1995) CPJ 1 (SC)=(1995) 3 SCC 583. Both the appeals stand disposed of in above terms. Appeals disposed of.